

Service Date: September 26, 2006

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER OF the Petition of)	UTILITY DIVISION
Montana-Dakota Utilities Co., for a Declaratory)	
Ruling and Certification of an Eligible Renewable)	DOCKET NO. D2006.7.99
Resource for a 31.5 Mw wind farm to be)	ORDER NO. 6777
constructed by Java Wind LLC)	

ORDER DENYING PETITION FOR DECLARATORY RULING

1. On July 6, 2006, Montana-Dakota Utilities Co., (MDU) filed with the Montana Public Service Commission (Commission) a Petition for a Declaratory Ruling and Certification of an Eligible Renewable Resource (Petition). MDU requested that the Commission rule (1) that one half of the energy, with associated renewable energy credits (RECs), that MDU purchases from a 31.5 megawatt wind farm to be located in Walworth County, South Dakota (Project) is creditable under the Montana Renewable Power Production and Rural Economic Development Act (Act) because energy delivered anywhere into MDU's integrated system is delivered into Montana; and (2) that RECs from the Project or any other renewable resource in MISO are creditable under the Act.

2. The Commission has not held a hearing in this matter. MDU neither requested nor showed good cause for a hearing. The record in this docket consists of the Petition. ARM 1.3.227(4).

3. A petition for a declaratory ruling must include the name and address of the petitioner, a detailed statement of facts on which the petitioner requests the agency to base its ruling, facts showing the petitioner will be affected by the ruling, the rule or statute for which the petitioner seeks a ruling, the questions presented, the petitioner's assertions of propositions of law, the specific relief requested, and the name and address of any interested person known to the petitioner. ARM 1.3.227(2).

4. The name and address of the petitioner are Montana-Dakota Utilities Co., Attn: Mr. Bruce Imsdahl, President and Chief Executive Officer, 400 N. 45h Street, Bismarck, ND 58501-4092.

5. The facts on which MDU requested the Commission to base its declaratory ruling are as follows:

A. MDU is a combination electric and gas utility and generally subject to the regulatory jurisdiction of the Commission;

B. The Project will be a 31.5 megawatt wind farm located in Walworth County, South Dakota;

C. The Project will be interconnected with MDU's electric generation, transmission and distribution system serving eastern Montana, western North Dakota, and western South Dakota (Integrated System); and

D. MDU will obtain 50 percent of the RECs associated with the wind farm.

6. The facts represented by MDU to be sufficient to show that it would be affected by the requested ruling are as follows:

A. The Act requires electric utilities subject to the Commission's jurisdiction to acquire certain amounts of eligible renewable energy;

B. The Commission determined that MDU was subject to the Act; and

C. If the Commission does not issue the requested ruling, MDU will not know what additional renewable resources it may need to acquire.

7. The statutes and rules for which MDU seeks a declaratory ruling are §§ 68-8-1003 and 1004, MCA, and ARM 38.5.2001 and ARM 38.5.8301.

8. The Commission restates the questions presented as follows:

A. Is the Project an eligible renewable resource as defined by § 69-8-1003(6), MCA?

B. Are all renewable resources in the area encompassed by MISO eligible renewable resources as defined by § 69-8-1003(6), MCA?

9. MDU asserted the following propositions of law:

A. An eligible renewable resource must either be located in Montana or deliver power into Montana;

B. For the purchase of power from an eligible renewable resource to creditable, the RECs associated with the power cannot have been sold separately to another party; and

C. A public utility can satisfy its obligations under the Act by purchasing RECs separately from the power associated with them.

10. An eligible renewable resource is:

a facility either located in Montana or delivering electricity from another state into Montana that commences commercial operation after January 1, 2005, and that produces electricity from one or more of the following sources:

- (a) wind;
- (b) solar;
- (c) geothermal;
- (d) water power, in the case of a hydroelectric project that does not require a new appropriation, diversion, or impoundment of water and that has a nameplate rating of 10 megawatts or less;
- (e) landfill or farm-based methane gas;
- (f) gas produced during the treatment of wastewater;
- (g) low-emission, nontoxic biomass based on dedicated energy crops, animal wastes, or solid organic fuels from wood, forest, or field residues, except that the term does not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chromate-arsenic;
- (h) hydrogen derived from any of the sources in this subsection (6) for use in fuel cells; and
- (i) the renewable fraction from the sources identified in subsections (6)(a) through (6)(h) of electricity production from a multiple-fuel process with fossil fuels.

§ 69-8-103(6), MCA.

11. The Project does not yet exist. Therefore, if the Project commences commercial operation, it will be after January 1, 2005. The Project will produce electricity from wind.

12. The Project will not be located in Montana. Therefore, the key question is what “delivering electricity into Montana” means. “Delivering electricity into Montana” could require (1) being connected to an electric grid that extends into Montana, (2) being connected to an integrated system that extends into Montana, (3) having a contract path into Montana, (4) showing physical flow into Montana, or (5) some other criterion.

13. MDU did not assert any propositions of law, supported by legal argument, as to the meaning of “delivering electricity into Montana.” In its prayer for relief, MDU merely stated,

“ . . . The Project is creditable under the Renewable Act because energy delivered anywhere into Montana-Dakota integrated system is delivered into Montana.”

14. ARM 38.5.8301(2) requires MDU use RECs tracked and verified through the Midwest Renewable Energy Tracking System (MRETS), if it is operational, to comply with the Act. MRETS is scheduled to be operational in early 2007, before the Act requires any purchases.

15. MDU did not offer any factual representations that RECs from the Project would be tracked and verified by MRETS.

16. The Commission cannot issue a declaratory ruling that the Project is an eligible renewable resource based on the facts presented to it by MDU. The Commission is not aware of any facts that would preclude certification of the Project. However, the facts presented and the legal propositions in the Petition are insufficient. The Commission invites MDU to seek certification of the Project as an eligible renewable resource in a proceeding subsequent to this one, and to make the appropriate factual representations and legal assertions to support such a certification.

17. The Commission cannot issue a declaratory ruling that all renewable resources in the area encompassed by MISO are eligible renewable resources. MDU has not made any factual representations that all such resources (a) deliver electricity into Montana, (2) commenced commercial operation after January 1, 2005, (3) produce electricity solely from the sources listed in § 69-8-1003(6), MCA, and (4) will have RECs tracked and verified by MRETS.

Order

THEREFORE, based upon the foregoing, the Petition of Montana-Dakota Utilities Co. for a Declaratory Ruling and Certification of an Eligible Renewable Resource is DENIED.

DONE AND DATED this 1st day of August 2006, by a vote of 5 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

GREG JERGESON, Chairman

BRAD MOLNAR, Vice Chairman

DOUG MOOD, Commissioner

ROBERT H. RANEY, Commissioner

THOMAS J. SCHNEIDER, Commissioner

ATTEST:

Connie Jones
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.